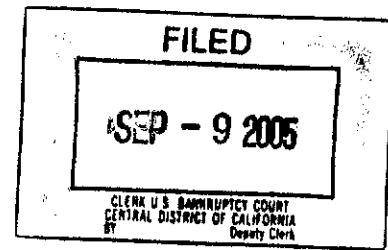


ORIGINAL

DANIEL J. BUSSEL (State Bar No. 121939),  
 MICHAEL L. TUCHIN (State Bar No. 150375),  
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 Los Angeles, California 90067-5061



Reorganization Counsel for  
 Skilled Healthcare Group, Inc., f/k/a Fountain View,  
 Inc. and the Reorganized Enterprise

Skilled Healthcare Group, Inc.'s Mailing Address  
 27442 Portola Parkway, Suite 200  
 Foothill Ranch, CA 92610

**UNITED STATES BANKRUPTCY COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 LOS ANGELES DIVISION**

In re:

**FOUNTAIN VIEW, INC.**, a Delaware  
 corporation, *et al.*,

Debtors.

Case No.: LA 01-39678BB through  
 LA 01-39697BB

And LA 01-45516 BB;  
 LA 01-45520 BB; and  
 LA 01-45525 BB

(Jointly Administered under Case No.  
 LA 01-39678BB)

Chapter 11

[Pleading Applies To All Cases]

**NOTICE OF MOTION AND  
 MOTION TO EXTEND LAST DATE  
 FOR TIMELY FILING  
 OBJECTIONS TO PROFESSIONAL  
 LIABILITY CLAIMS;  
 MEMORANDUM IN SUPPORT  
 THEREOF; DECLARATION OF  
 ROBERT FANCY**

Hearing

DATE: October 5, 2005

TIME: 10:00 a.m.

PLACE: Courtroom 1475

Roybal Federal Building

255 E. Temple Street

Los Angeles, CA 90012

**NOTICE OF MOTION**

**TO THE HONORABLE SHERI BLUEBOND, UNITED STATES  
BANKRUPTCY JUDGE; THE CLAIMANTS SUBJECT TO THE MOTION; AND  
ANY PARTIES ENTITLED TO SPECIAL NOTICE:**

PLEASE TAKE NOTICE that on October 5, 2005, at 10:00 a.m., or as soon thereafter as counsel may be heard, a hearing will be held before the Honorable Sheri Bluebond on the annexed *Motion to Extend Last Date for Timely Filing Objections to Professional Liability Claims* (the "Motion") filed by the Reorganized Enterprise<sup>1</sup> in the above-captioned substantively consolidated chapter 11 cases. You should carefully review the Motion to determine whether you hold a claim that may be affected by the Motion.

PLEASE TAKE FURTHER NOTICE that Local Bankruptcy Rule 9013-1(a)(7) requires that any objection, joinder, or response to the Motion must be in writing; must be accompanied by supporting evidence; must comply with Local Bankruptcy Rule 9013-1; and must, no later than September 21, 2005, be filed with the Court at the following address:

United States Bankruptcy Court  
Attn: Clerk of the Court  
300 North Los Angeles Street  
Los Angeles, California 90012

and served on the Reorganized Enterprise's attorneys at the following address:

Klee, Tuchin, Bogdanoff & Stern LLP  
Attn: Laura L. Buchanan, Esq.  
2121 Avenue of the Stars, 33rd Floor  
Los Angeles, California 90067-5061

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<sup>1</sup> "Reorganized Enterprise" means Skilled Healthcare Group, Inc., and all of its direct and indirect subsidiaries.

1       **Letters or telephone inquiries do not satisfy the requirement for a timely written**  
2 **objection or response.** Local Bankruptcy Rule 9013-1(a)(11) states that, if you do not  
3 timely file and serve an objection or response, the Court may find that you have consented to  
4 the relief requested in the Motion.

5  
6 DATED: September 7, 2005

  
7 LAURA L. BUCHANAN, a Member of  
8 KLEE, TUCHIN, BOGDANOFF & STERN LLP  
9 Reorganization Counsel for Skilled Healthcare Group, Inc.  
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KLEE, TUCHIN, BOGDANOFF & STERN LLP  
2121 AVENUE OF THE STARS, 33<sup>RD</sup> FLOOR  
LOS ANGELES, CALIFORNIA 90067-5061  
(310) 407-4000

**MOTION TO EXTEND LAST DATE**  
**FOR FILING OBJECTIONS TO PROFESSIONAL LIABILITY CLAIMS**

Pursuant to the terms of the *Debtors' Third Amended Joint Plan of Reorganization* dated April 22, 2003 (the "Plan," as modified and confirmed pursuant to the Confirmation Order),<sup>2</sup> the Reorganized Enterprise<sup>3</sup> hereby moves for entry of an order extending the last date for timely filing objections to professional liability claims.<sup>4</sup>

This *Motion to Extend Last Date for Timely Filing Objections to Professional Liability Claims* (the "Motion") is based on the Memorandum of Points and Authorities attached hereto, the Declaration of Robert Fancy attached hereto, the record in this case, including the pleadings and documents filed on behalf of the parties, the arguments and representations of counsel, and any oral or documentary evidence presented at or prior to the time of the hearing.

By the Motion, the Reorganized Enterprise respectfully requests that the Court enter an order:

(1) Fixing May 5, 2006 as the last day for timely filing of objections to all professional liability claims, without prejudice to the right of the Reorganized Enterprise to seek further extensions;

(2) Providing that the Reorganized Enterprise has properly reserved its rights to assert any and all objections to any of the claims that are subject to this Motion or to assert any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-

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<sup>2</sup> Except as otherwise defined herein, capitalized terms have the meaning ascribed to them in the Plan.

<sup>3</sup> "Reorganized Enterprise" means Skilled Healthcare Group, Inc., together with all of its direct and indirect subsidiaries.

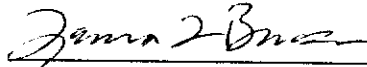
<sup>4</sup> A list of known proofs of claim asserting professional liability claims that have not been withdrawn or appropriately amended is attached to the Declaration of Robert Fancy as Exhibit A. Should the Reorganized Enterprise become aware of additional professional liability claims subject to the objection deadline, it will promptly serve such claimants with notice.

1 transfer actions, or any other bankruptcy or nonbankruptcy claims against the claimants  
2 whose claims are the subject of this Motion; and

3 (3) Granting the Reorganized Enterprise any other relief that the Court deems just  
4 and appropriate.

5  
6  
7 DATED: September 8, 2005

Respectfully Submitted,

8  
9 

10 LAURA L. BUCHANAN, a Member of  
11 KLEE, TUCHIN, BOGDANOFF & STERN LLP  
12 Reorganization Counsel for Skilled Healthcare Group,  
13 Inc.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

This Memorandum of Points and Authorities is submitted in support of the *Motion For Order To Extend Last Date for Timely Filing Objections to Professional Liability Claims* (the "Motion") filed concurrently herewith by the Reorganized Enterprise pursuant to the terms of the *Debtors' Third Amended Joint Plan of Reorganization dated April 22, 2003* (the "Plan," as modified and confirmed pursuant to the Confirmation Order).<sup>5</sup> By the Motion, the Reorganized Enterprise seeks to extend the last date on which to timely file objections to professional liability claims<sup>6</sup> to May 5, 2006 without prejudice to the right of the Reorganized Enterprise to seek further extensions.

**A. Jurisdiction.**

The court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Court expressly retained jurisdiction with respect to the allowance of claims pursuant to the terms of the Plan and the Confirmation Order. See Plan at Art.VI.C.1; Confirmation Order at ¶ 31.

**B. Background.**

On October 2, 2001, Fountain View, Inc. and nineteen of its subsidiaries filed voluntary petitions under Chapter 11 of the Bankruptcy Code. On November 28, 2001, voluntary Chapter 11 petitions were filed for three additional Fountain View, Inc. subsidiaries. On July 10, 2003, the Bankruptcy Court entered its *Order Confirming Debtors' Third Amended Joint Plan of Reorganization dated April 22, 2003 and Authorizing Substantive Consolidation* (the "Confirmation Order"). The Effective Date of the Plan occurred on August 19, 2003.

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<sup>5</sup> Except as otherwise defined herein, capitalized terms have the meanings ascribed to them in the Plan.

<sup>6</sup> A list of known proofs of claim asserting professional liability claims that have not been withdrawn or appropriately amended is attached to the Declaration of Robert Fancy as Exhibit A. Should the Reorganized Enterprise become aware of additional professional liability claims subject to the objection deadline, it will promptly serve such claimants with notice.

**C. The Professional Liability Claims.**

The claims register in the Fountain View Chapter 11 cases at its peak included 367 professional liability claims in an aggregate amount of approximately \$1.587 billion, all of which were initially disputed and unliquidated. See Declaration of Robert Fancy at ¶ 7. As of August 19, 2005, there remain twenty three (23) unliquidated, non-duplicative professional liability claims that are subject to the ADR Procedures. Five additional professional liability matters are currently pending in state court and are no longer stayed pursuant to the injunction provided in the Confirmation Order. The Reorganized Enterprise continues to believe that to the extent that valid professional liability claims exist, its insurance and reserves remain adequate to satisfy those claims.

Under the Plan, all claimants asserting disputed or unliquidated professional liability claims are subject to the discharge injunction under the Confirmation Order that requires compliance with the Plan's ADR Procedures (the "ADR Injunction"). These claimants must comply with the ADR Procedures prior to seeking to modify the ADR Injunction to allow them to proceed with any state court action. The Reorganized Enterprise has been and continues to be willing to attempt to facilitate insurance-funded settlements through mediated or unmediated settlement discussions.

Pursuant to the terms of the Plan and the Confirmation Order, the Reorganized Enterprise and its insurers and various intermediaries have spent a great deal of effort reviewing and evaluating and attempting to resolve through a variety of avenues numerous proofs of claim and requests for allowance of administrative expense that have been filed with the Bankruptcy Court that relate to insured claims under the Debtors' professional liability and workers' compensation policies. In accordance with the Plan and the Confirmation Order, the great majority of those claims have been successfully liquidated and resolved through the ADR Procedures approved by the Court or through the ordinary litigation and administrative processes relating to professional liability.

In May 2004 this Court first extended the last date for timely filing objections to timely filed claims from May 19, 2004 to November 1, 2004 in light of the success of the

1 ADR Procedures and pending proceedings in nonbankruptcy judicial or administrative fora  
2 in dramatically reducing the number of remaining professional liability and workers  
3 compensation claims without the necessity of any further intervention by this Court. At that  
4 time, approximately 73 professional liability claims remained unresolved and 13 workers  
5 compensation remained on the claims register. Subsequently, the Court entered its *Order*  
6 *Extending Last Date for Timely Filing Objections to Professional Liability and Workers*  
7 *Compensation Claims*, which extended the objection deadline to April 15, 2005 for both  
8 professional liability and workers compensation claims, and its *Order Extending Last Date*  
9 *for Timely Filing Objections to Professional Liability* ("Third Extension Order"), which  
10 extended the objection deadline for remaining unliquidated and disputed professional  
11 liability claims to October 31, 2005.

12 At the time the Reorganized Enterprise requested the last extension, there remained  
13 twenty nine (29) unliquidated non-duplicative professional liability claims that were subject  
14 to the ADR Procedures, and four professional liability matters were pending in state court.  
15 The ADR Procedures have continued to result in further claims resolution, so that as of  
16 August 19, 2005 only twenty three (23) unliquidated, non-duplicative professional liability  
17 claims currently are subject to the ADR Procedures, and five additional professional liability  
18 matters are currently pending in state court and are no longer stayed pursuant to the  
19 injunction provided in the Confirmation Order. The Reorganized Enterprise expects to  
20 liquidate the vast majority of those remaining claims through the ADR Procedures or  
21 otherwise in pending proceedings in nonbankruptcy judicial or administrative fora.

22 While it remains possible that it will be necessary to invoke the claims adjudication  
23 processes of this Court to finally allow and determine some number of the remaining  
24 professional liability claims, it has not been necessary to invoke that jurisdiction thus far, and  
25 it is probable that most, if not all, of the remaining claims can be resolved through the still-  
26 pending nonbankruptcy processes that have successfully dealt with the large number of  
27 similar claims. The Reorganized Enterprise believes these remaining professional liability  
28 claims are likely to be settled or satisfied through available insurance. The Reorganized



Enterprise submits that there is no reason, other than the looming objection deadline, to invoke the bankruptcy claims adjudication process with respect to the remaining claims at this time as the nonbankruptcy processes are moving forward as contemplated by the Plan and the Confirmation Order. Under these circumstances, it is proper with respect to these claims for the Court to exercise the power expressly reserved in the Plan and the Confirmation Order to extend the objection deadline.

**D. Argument.**

As an initial matter, a proof of claim is generally *prima facie* allowable. Bankruptcy Code section 502, however, authorizes a debtor to object to claims, and Article IV.H of the Plan expressly authorizes the Reorganized Enterprise to object to claims on behalf of the Debtors.<sup>7</sup> Pursuant to the Plan and the Third Extension Order, the "last day for timely filing of objections to all professional liability claims . . . is October 31, 2005," Third Extension Order ¶ 1, and the Reorganized Enterprise has the right to seek, by noticed Motion, a further extension of the last date for filing a timely objection to any of the professional liability claims. Third Extension Order ¶ 3.

Under the Plan, this Court retained jurisdiction over the claims adjudication process and the Reorganized Enterprise was granted authority to object to and otherwise deal with claims. *See* Article IV.H and Article VI.C of the Plan. Article VI.C of the Plan provides that the Court retained jurisdiction to, *inter alia*:

- "1. Allow, disallow, determine, liquidate, classify, establish the priority or secured or unsecured status of, estimate, or limit any Claim, Interest, or Administrative Claim, and with respect to Claims based on personal injury or wrongful death, continue to enforce the ADR Procedures; . . .
4. Ensure that distributions to holders of Allowed Claims, Administrative Claims, and Interests are accomplished pursuant to the provisions of the Plan;
5. Resolve any and all applications, motions, adversary proceedings, and other matters involving the Debtors that may be pending on the Effective Date or that may be instituted thereafter in accordance with the terms of the Plan;
6. Enter such orders as may be necessary or appropriate to implement or

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<sup>7</sup> Article IV(H) of the Plan states that "[a]fter the Effective Date, only the Reorganized Enterprise shall have the authority to file, settle, compromise, withdraw, or litigate to judgment objections to Claims and Interests."

1 consummate the provisions of the Plan and all contracts, instruments, releases, and  
2 other agreements or documents entered into in connection with the Plan;  
3 7. Resolve any and all controversies, suits, or issues that may arise in connection  
4 with the consummation, interpretation, or enforcement of the Plan or any person's  
5 rights or obligations in connection with the Plan; . . .[and]  
6 9. Issue injunctions, enter and implement other orders, or take such other actions  
7 as may be necessary or appropriate to enforce the Plan or restrain interference by any  
8 entity with consummation or enforcement of the Plan; . . . ."

7 Generally, "[t]here is no bar date or deadline for filing objections." *In re Kolstad*, 928  
8 F.2d 171, 174 (5th Cir.), *cert. denied*, 502 U.S. 958 (1991); *see also Ashford v. Consolidated*  
9 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 225 (B.A.P. 9th Cir.  
10 1995) *citing In re Thompson*, 965 F.2d 1136, 1147 (1st Cir. 1992) and *Kolstad*, 928 F.2d  
11 171, 174, *supra* ("Rule 3007 provides that an objection shall be in writing and filed with the  
12 bankruptcy court, and a copy of the objection with notice of a hearing shall be mailed to the  
13 claimant at least 30 days prior to the hearing."). The Plan, however, set a deadline for filing  
14 objections to claims unless the objection deadline was extended by the Court. *See* Article  
15 IV.H of the Plan.

16 The time to file an objection to a claim may be enlarged pursuant to Rule 9006, before  
17 it has expired, for "cause shown." *See* Fed. R. Bankr. P. 9006(b)(1). This requires a  
18 showing of "some cause" and is a matter of discretion for the court, which should be "liberal  
19 in granting extensions of time sought before the period to act has elapsed" so long as the  
20 moving party has not been negligent, acted in bad faith or abused the privilege of extensions.  
21 10 *Collier on Bankruptcy* ¶ 9006.06[2], at 9006-14 (15<sup>th</sup> ed. rev'd 2002). By contrast, a  
22 showing of excusable neglect is required if such an enlargement is sought after the time for  
23 removal has expired. *Collier, supra*, ¶ 9006.06[3] at 9006-14.

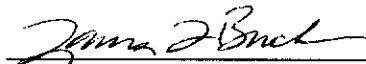
24 The Reorganized Enterprise submits that the Court should at this time extend the  
25 objection deadline for professional liability claims to May 5, 2006 without prejudice to the  
26 right of the Reorganized Enterprise to seek further extensions for cause. An extension of  
27 this length should enable the Reorganized Enterprise and its insurers to make significant  
28 additional progress in liquidating and allowing the remaining pre-confirmation professional

1 liability claims through the ADR Procedures and the other judicial and administrative  
2 avenues available for the final determination of these claims. Undoubtedly, numerous claims  
3 will be fully and finally resolved through those alternative processes. The extent to which  
4 any remaining claims or issues need to be determined by this Court with respect to  
5 professional liability claims is, at best, uncertain, and litigating claims objections to such  
6 claims is premature at this time. It is possible that the vast majority of the remaining claims  
7 will be resolved consensually and within applicable insurance limits and, if thereafter proofs  
8 of claim that do not reflect such resolutions remain on the claims register or court docket,  
9 that the Reorganized Enterprise will be able to file an omnibus objection motion objecting to  
10 such claims in a manner that conserves the resources of the Reorganize Enterprise, the  
11 claimants and the Court. Rather than forfeit any objections, however, if the deadline is not  
12 extended, the Reorganized Enterprise would be compelled to file objections to each and  
13 every claim that remains disputed and unliquidated at this time. Failing to extend the  
14 deadline under these circumstances would unnecessarily impose significant burdens on both  
15 this Court and the parties and potentially undermine the alternative processes that have so far  
16 successfully resolved a majority of these claims.

17 **E. Conclusion.**

18 For the foregoing reasons, the Reorganized Enterprise respectfully requests that the  
19 Court grant the Motion and extend the last date for timely filing of objections to professional  
20 liability claims as provided in the Motion.

21  
22 DATED: September 8, 2005

  
23 LAURA L. BUCHANAN, a Member of  
24 KLEE, TUCHIN, BOGDANOFF & STERN LLP  
25 Reorganization Counsel for Skilled Healthcare Group,  
26 Inc.  
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**DECLARATION OF ROBERT FANCY**

I, Robert Fancy, declare as follows:

1. I am over 18 years of age. Except as otherwise indicated, if called as a witness, I could and would competently testify to the matters set forth herein.

2. Since December 2, 2002, I have been the Vice President of Risk Management and Insurance to Skilled Healthcare, LLC, and its predecessors, Fountain View, Inc. and its chapter 11 debtor affiliates, the debtors and debtors in possession in the above-captioned chapter 11 reorganization cases (collectively, the "Debtors"). I report to Roland Rapp, General Counsel and Chief Administrative Officer of Skilled Healthcare, LLC. In that capacity, one of my principal responsibilities is to assist Roland Rapp, General Counsel and Chief Administrative Officer of Skilled Healthcare, LLC, in the handling of certain litigation and all insurance matters. My responsibilities include assisting Mr. Rapp in the evaluation of all existing and future matters regarding certain litigation, insurance coverage, insurance carriers, third party administrators, brokers, and the administration and pursuit of current and future legal and insurance matters.

3. I submit this declaration in support of the Reorganized Enterprise's *Motion to Extend Last Date for Filing Objections to Professional Liability Claims* (the "Motion").

4. Except as otherwise indicated, I have personal knowledge of the matters set forth herein based upon my first hand experience or upon my review of business records under my control. These records were created at or near the time by, or from information transmitted by, a person with knowledge and kept in the course of regularly conducted business activity in accordance with regular business practices.

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1           5. I have reviewed, and I am familiar with, the Motion, the *Debtors' Third*  
2 *Amended Joint Plan of Reorganization dated April 22, 2003* (the "Plan"),<sup>8</sup> and the *Order*  
3 *Extending Last Date for Timely Filing Objections to Professional Liability and Workers*  
4 *Compensation Claims* ("Third Extension Order") that extended the last date for timely filing  
5 objections to such claims to October 31, 2005.

6           6. I, along with members of the Reorganized Enterprise's accounting staff under  
7 my supervision, have reviewed Reorganized Enterprise's (and the Debtors') books and  
8 records, their Schedules, and many of the claims filed against the Debtors' estates.

9           7. The Reorganized Enterprise's records, the claims register maintained by Berger  
10 & Associates, Inc. and the Court's claim registers in the Debtors' cases reflect the filing or  
11 attempted filing of 367 professional liability claims in an aggregate amount of approximately  
12 \$1.587 billion; such amount does not include proofs of claim that did not assert a specific  
13 amount. All of these claims were initially disputed and unliquidated. All but 28 of these  
14 matters have been fully and finally resolved through insurance funded settlements at a small  
15 fraction of the claimed amounts. A list of known pending proofs of claim that assert  
16 professional liability claims and have not been withdrawn or appropriately amended is  
17 attached hereto as Exhibit A. Currently, there remain twenty three (23) unliquidated, non-  
18 duplicative professional liability claims that are subject to the ADR Procedures. Five  
19 additional professional liability matters are currently pending in state court and are no longer  
20 stayed pursuant to the injunction provided in the Confirmation Order. I believe that to the  
21 extent that valid professional liability claims exist, the Reorganized Enterprise's remaining  
22 insurance and reserves remain adequate to satisfy those claims.

23           8. My staff and I have analyzed the Reorganized Enterprise's books and records  
24 regarding the time required for resolving professional liability claims under the ADR  
25 Procedures, and I have concluded that the time required for the claimants asserting  
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27 \_\_\_\_\_  
28 <sup>8</sup> Except as otherwise defined herein, capitalized terms have the meaning ascribed to them in the Plan.

1 professional liability claims to complete the ADR Procedures will extend beyond October  
2 31, 2005. In my judgment, substantial additional progress can be made in resolving these  
3 remaining claims by May 5, 2006 through the ADR Procedures.

4 I declare under penalty of perjury under the laws of the United States of America that  
5 the foregoing is true and correct to the best of my information, knowledge, and belief

6 Executed on this 8<sup>th</sup> day of September, at Foothill Ranch, California.

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8   
9 ROBERT FANCY

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